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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

DELPHI CORPORATION, et al.,  
  
Debtors.

Chapter 11

Case No. 05-44481 (RDD)  
(Jointly Administered)

**OBJECTION BY HAYES LEMMERZ INTERNATIONAL, INC. TO DEBTORS'  
NOTICE OF CURE AMOUNT WITH RESPECT TO EXECUTORY CONTRACT TO  
BE ASSUMED OR ASSUMED AND ASSIGNED UNDER PLAN OF  
REORGANIZATION**

Hayes Lemmerz International, Inc. (collectively, "Hayes Lemmerz") objects to the Debtors' Notice of Cure Amount with respect to Executory Contract to be Assumed or Assumed and Assigned under Plan of Reorganization ("Cure Notice") [Docket #12375]. In support of its objection Hayes Lemmerz states as follows:

**Introduction**

1. Hayes Lemmerz files this objection because:
  - (a) the proposed cure amounts for the Contracts (defined below) may be incorrect and some of the Contracts may not be executory; and
  - (b) the Cure Notice does not clearly state whether and to whom Debtors intend to assign the Contracts. If the Contracts are in fact to be assigned, no proposed

assignee has given Hayes Lemmerz adequate assurance that it would be able to perform its duties under the Contracts.

### **Background**

2. On January 29, 2008, Debtors filed the Cure Notice.

3. The Cure Notice (attached as Exhibit A) identifies the purchase orders that Debtors seek to assume and assign under the Plan of Reorganization (collectively, "Contracts"). The Cure Notice proposes a cure amount of \$0 for each of the Contracts.

### **Argument**

4. Section 365(b)(1) of the Bankruptcy Code provides that "if there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption ... the trustee (A) cures ... such default." Hayes Lemmerz has not yet identified the status of the Contracts and has not determined whether any cure amounts are due and owing. Hayes Lemmerz reserves all rights with respect to the existence of cure amounts owing under the Contracts.

5. Debtors do not state whether they intend to assign the Contracts. Further, if Debtors intend to assign the Contracts they have not stated to whom they intend to assign them. Before Hayes Lemmerz enters into business relationships with suppliers, Hayes Lemmerz requires that its prospective suppliers meet certain qualifications ("Hayes Lemmerz Qualifications"). Under Section 365(f)(2)(B) of the Bankruptcy Code, Debtors may assign an executory contract only if "adequate assurance of future performance by the assignee of such contract ... is provided." To the extent Debtors propose to assign the Contracts to someone other than the reorganized Debtors, Debtors should not be allowed to assign the Contracts unless and

until any proposed assignee has provided Hayes Lemmerz with adequate assurance of future performance of the Contracts.

6. Because Hayes Lemmerz has not yet completed its review of the Contracts, it does not concede that all of the Contracts are executory. Until Hayes Lemmerz is able to determine that the Contracts are executory contracts, it objects to the proposed assumption and assignment.

7. Because the legal points and authorities upon which this objection relies are incorporated and do not represent novel theories of law, Hayes Lemmerz requests that the requirement of the filing of a separate memorandum of law under Local Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York be deemed satisfied.

**RELIEF REQUESTED**

Hayes Lemmerz requests that the Court condition the assumption and assignment, upon payment of the correct cure amount, if any, and upon any proposed assignee's (other than the reorganized Debtors) proof of adequate assurance of future performance of the Contracts.

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February 8, 2008

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing ***Objection by Hayes Lemmerz International, Inc. to Debtors' Notice of Cure Amount with respect to Executory Contract to be Assumed or Assumed and Assigned under Plan of Reorganization*** was electronically filed using the Court's CM/ECF filing system, and that a true and correct copy of the same was served via Federal Express to the parties identified below:

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and

The Honorable Robert D. Drain  
United States Bankruptcy Judge  
U.S. Bankruptcy Court for the Southern District of New York  
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Dated: February 8, 2008

/s/ Ralph E. McDowell  
Ralph E. McDowell